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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,796	12/11/2003	Ananda Chinniah Sankaran	016295.1470 (DC-05374)	8188
23640 7590 05/15/2008 BAKER BOTTS, LLP 910 LOUISIANA HOUSTON, TX 77002-4995				
EXAMINER ZHE, MENG YAO				
ART UNIT 2195		PAPER NUMBER		
NOTIFICATION DATE 05/15/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

debbie.allen@bakerbotts.com

Office Action Summary

Application No.

10/733,796

Applicant(s)

SANKARAN ET AL.

Examiner

MENGYAO ZHE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-23 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roselli et al., Patent No. 6,718,486 (hereafter Roselli) in view of Leigh, Pub. No. 2003/0158940 (hereafter Leigh).
4. Roselli was cited in the previous office action.
5. As per claims 1, 10, and 17, Roselli teaches a method for allocating application processing operations among information handling system cluster resources in response to a fail-over event (Column 9, lines 44-48), comprising:

calculating performance measurements for a failing-over cluster node and a fail-over cluster node (Column 9, line 63-Column 10, line 5; Column 10, lines 10-22, lines 25-39; Column 19, lines 53-57);

transforming a first calendar schedule associated with failing-over application processing operations into a second calendar schedule to be associated with failing-

over application processing operations on the fail-over cluster node based on the calculated performance measurements; and implementing the second calendar schedule on the fail-over cluster node such that the fail-over cluster node may effect failing-over application processing operations according to the second calendar schedule (Column 9, lines 32-36; Column 10, lines 10-22, lines 25-39; Column 13, lines 32-37; Column 19, lines 53-57).

Rosellie does not specifically teach calculating a performance ratio between a performance-related characteristic identified for a failing-over cluster node and a similar performance-related characteristic identified for a fail-over cluster node.

However, Leigh teaches calculating a workload ratio between two servers in a cluster for the purpose of using a ratio as a metric to better balance the workload between servers (Para 26, 57).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Roselli where performance measurements for the fail-over and failing-over nodes are calculated, with the specifics of calculating a performance ratio between each server, specifically a workload performance ratio, as taught by Leigh, such that a performance ratio between the fail-over and the failing over nodes are calculated, because it uses a ratio as a metric to better balance the workload between servers.

6. As per claims 2, 11, 12, 13, and 14, Roselli teaches determining whether resources on the fail-over cluster node are sufficient to support failing-over application

processing operations in accordance with the second calendar schedule in addition to any existing fail-over cluster node application processing operations (Column 9, line 63-Column 10, line 5).

7. As per claims 3, 22, Roselli teaches applying a resource negotiation algorithm to the application processing operations of the fail-over node in response to determining that the resources of the fail-over cluster node are insufficient to support both failing-over application processing operations in accordance with the second calendar schedule and any existing fail-over cluster node application processing operations (Column 9, line 63-Column 10, line 5; Column 19, lines 50-57).

8. As per claims 4, 15 and 16, Roselli teaches redistributing scheduled jobs on a failed node to other nodes according to the amount of workload on the other nodes (Column 9, line 63-Column 10, line 5; Column 19, lines 50-57). Roselli does not specifically teach calculating a new calendar schedule for the fail-over node application processing operations based on results from application of the resource negotiation algorithm; and implementing the new calendar schedule on the fail-over node.

However, since Roselli does teach a fault-tolerance unit that monitors the workload on each node and rescheduled jobs on a failed node accordingly, it would have been obvious to one having ordinary skill in the art to use this fault-tolerance unit to try to fit a set of jobs from a failed node to a second node and come up with a new schedule. In response to calculating that the workload would be too taxing on this

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second node, the fault-tolerance unit would take away some jobs from the set of jobs and redistribute to other nodes, while the remaining jobs would be scheduled into the second node as part of a new calendar schedule to be run.

9. As per claim 5, Roselli teaches identifying at least one characteristic of the failing-over cluster node; identifying at least one characteristic of the fail-over cluster node; and calculating the performance ratio between the failing-over cluster node and the fail-over cluster node based on the identified characteristics of each node (Column 19, lines 50-57).

10. As per claim 6, Roselli teaches collecting information handling system cluster node resources required by at least one application to be deployed in an information handling system cluster configuration (Column 10, lines 6-22).

11. As per claim 7, Roselli teaches maintaining a knowledge-base containing information regarding one or more operational aspects of the information handling system cluster (Column 9, lines 30-36; Column 10, lines 23-40).

12. As per claims 8, 18, 19, 20, 21, Roselli teaches determining whether the first calendar schedule for a selected cluster node is feasible using operational aspects of

the selected cluster node available in the knowledge-base (Column 9, line 65-Column 10, line 5; Column 19, lines 50-57).

13. As per claims 9 and 23, Roselli teaches updating an application-to-cluster node map identifying the cluster node associated with each application following the allocation of application processing operations among the information handling system resources in response to a fail-over event (Column 13, lines 32-37).

Response to Arguments

14. Applicant's argument filed on 2/11/2008 regarding to claims 1-23 have been fully considered, but they are moot in view of the new ground of rejection.

Conclusion

15. Applicants' amendments necessitated the new grounds of rejection presented in this office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MengYao Zhe whose telephone number is 571-272-6946. The examiner can normally be reached on Monday Through Friday, 10:00 - 8:00 EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached at 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Meng-Ai An/

Supervisory Patent Examiner, Art Unit 2195